IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.371 OF 2005.

Smt.Kalpana Krishnakant Oza
and another. ... Petitioners.

Versus.

M/s.Manukul Public Charitable
Trust and others. ... Respondents.

Ms.Tendulkar holding for Shri M.S.Karnik for the Petitioners.

Ms.Wadkar holding for Shri Sachindra B.Shetye for the Respondents Nos.1 to 6.

CORAM : ABHAY S.OKA, J.

DATED : 12th June, 2007.

P.C.:

1. Heard the learned Advocate appearing for the Petitioners and the Advocate for the Respondents Nos.1 to 6. The Petitioners are the original Defendants Nos.3 and 4. A suit was filed by the 1st to 6th Respondents in the year 2001, i.e. before coming into force of the Code of Civil Procedure (Amendment) Act, 2002. A written statement was not filed by the Petitioners within the time granted by the trial Court. Therefore, an application was made on 25th October 2004 by the Petitioners praying that the order of the trial Court to proceed with the suit without written statement be set aside and the written statement may be taken on record.

2. After having heard the Advocates appearing for the parties, I find that a case was made out by the Petitioners for setting aside the order to proceed without written statement. It is stated in the Application that the 1st Petitioner is suffering from renal failure and the 2nd Petitioner is very old and is unable to move. In the reply filed by the 1st to 6th Respondents, these facts are not specifically disputed and it is merely stated that no documents have been produced to substantiate the case of illness. Therefore, it was obvious that the grounds pleaded in the Application made out a case for existence of extra-ordinary or special circumstances. The Application ought to have been allowed subject to payment of reasonable costs. Considering the delay in making the application, costs can be quantified at Rs.2000/-.

3. Hence the following order is passed:

i) The impugned order dated 24th November 2004 is quashed and set aside. The learned Judge will take on record the written statement tendered by the Petitioners.

ii) The Petitioners will pay costs of Rs.2000/-

to the 1st to 6th Respondents within a period of eight weeks from today.

iii) Considering the fact that the hearing of the suit is delayed on account of the default on the part of the Petitioners, the trial Court will decide the suit expeditiously as possible and preferably before the end of the year 2008.

Judge.